K DANAPALASINGAM K KRISNAN

v.

MAJLIS PERBANDARAN PETALING JAYA SELANGOR DARUL EHSAN

HIGH COURT MALAYA, SHAH ALAM
SURIYADI HALIM OMAR J
[COURT APPLICATION NO: MT1-13-25-2003]
5 FEBRUARY 2005

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Application for leave - To quash respondent's decision to impose a surcharge for an assessment rates notice - Whether applicant had locus standi to file application - Whether application frivolous or vexatious - Whether an abuse of process of court*

This was an application by the applicant for an order of *certiorari* to quash the decision of the respondent to impose a surcharge of RM7.92 in respect of an assessment rates notice that was paid by the applicant, a *mandamus* order for the return of the RM7.92, or alternatively, that the applicant be permitted to pay the rates without the surcharge. Since the applicant was merely asking for leave and not for the substantive order, he had to show that he had the requisite *locus standi* to file this application and, thereafter, a *prima facie* case that his application was not frivolous or vexatious.

Held (allowing the application):

[1] The applicant, *prima facie*, had sufficient *locus standi* to make this application and was not a mere cranky public-spirited ratepayer. No amount of word juggling could deny his standing to file the application, as he was the ratepayer whose financial interest, albeit a small sum, and legal rights had been peculiarly affected. Having scrutinized the complaints briefly, the grounds canvassed were not restricted to questions of dollars and cents only but had included the broader question of law, amongst them the contravention of the constitutional rights of the applicant, particularly that of art. 13 of the Federal Constitution. It was quite clear that the applicant had sufficient grounds to complain, particularly as the respondent had not taken into consideration the antecedents of the matter and the law before imposing the surcharge of RM7.92. On the totality of the facts, intertwined with the legal ramifications subsequently flowing from the facts, this application at this stage could not be said to be frivolous or an abuse of the process of the court. (pp 389 d, 390 c & 391 b)

Case(s) referred to:
George John v. Eng Wah Bros Film Sdn Bhd & Ors [1988] 1 MLJ 319 ***(refd)***
Lim Cho Hock v. Speaker Perak Legislative [1979] 2 MLJ 85 ***(refd)***

Legislation referred to:
Federal Constitution, art. 13
Holidays Act 1951, s. 3
Interpretation Acts 1948 and 1967, s. 54
Local Government Act 1976, ss. 102A, 103, 147
Rules of the High Court 1980, O. 18 r. 19, O. 53 r. 3(1)

For the applicant - A Jayaseelan; M/s Jayaseelan & Assoc

Reported by Suresh Nathan

JUDGMENT

Suriyadi Halim Omar J:

The applicant is the registered owner of a one-storey terraced house at No. 57 Jalan SS 25/37 Petaling Jaya, Selangor. Sometime in the month of August 2003, he received a "bil cukai taksiran" (assessment rates notice) dated 4 July 2003 for the above property with a yearly value of RM3,960. The yearly assessment was RM316.80 with the half year being RM158.40.

The abovementioned "bil cukai taksiran" clearly indicated that the applicant was only required to pay RM158.40 for the half yearly rate assessment, with any late payments after the month of August, to be made at the Majlis Perbandaran Petaling Jaya (MPPJ) only. The payment column was broken down into the assessed sum, any arrears, penalties, and "waran" (whatever that may mean). At the rear of that controversial document was printed that in the event of late payment the owner of the property, in this case the applicant, was required to pay the equivalent of 5% of the arrears without any prior warning being given. The last date of payment before that additional 5% (hereinafter for brevity sake referred to as "the 5% surcharge") was imposed in this case was 31 August 2003.

On 2 September 2003 two days after the last given permitted date, before the additional 5% was imposed (31 August 2003), the applicant went to the respondent's office to pay the impugned bill. At the latter's office the cashier, without giving any explanation had imposed an additional surcharge sum of RM7.92, thus inflating the amount from RM158.40 to RM166.32. For some rhyme or reason, a factual matter to be resolved only later at the trial proper, and not at this early stage, payment was still made by the applicant.

Subsequently after obtaining legal advice, the applicant through Tetuan Nur Naga & Singgam had written to the respondent, stating that as the respondent had wrongfully charged that sum of RM7.92 it thus must be refunded to the applicant. Regretfully until today that sum has yet to be refunded hence this action. As a consequence of the rebuff by the respondent not acquiescing to the return of the surcharge, the applicant filed this application of judicial review, *inter alia*, praying for the orders of *certiorari* to quash the decision of the respondent to impose the surcharge, a mandamus order to order the respondent to return the RM7.92, or alternatively that the applicant be permitted to pay the rates without the surcharge.

In the supporting affidavit the applicant had also, as one of the grounds of the application, alleged that the imposition of the surcharge of 5% was *ultra vires* the Local Government Act 1976, as the surcharge had yet to be gazetted.

For purposes of this application, which is still at the infancy stage ie, the stage of merely asking for leave and not for the substantive order, I was satisfied on the face of the record that the applicant, *prima facie*, had sufficient *locus standi* to make this application and was not a mere cranky public-spirited ratepayer. No amount of word juggling could deny his standing to file the application, as he was the very rate payer whose financial interest, albeit a small sum, and legal rights had been peculiarly affected. From local precedents, suffice if the applicant at this stage merely establishes at least sufficient interest in respect of the matter under consideration, rather than the more rigorous requirement of legal rights, to be canvassed later at the hearing proper. Here, as an aggrieved private citizen, not only had he proven that interest but had gone overboard by successfully establishing his financial and legal rights at this early stage (*Lim Cho Hock v. Speaker Perak Legislative* [1979] 2 MLJ 85).

I had to resolve this preliminary point first, as it is trite in law that without sufficient *locus standi*, no applicant may be permitted from initiating any legal proceeding. For purposes of this case, if the current applicant on the face of the records did not have that bundle of rights to initiate this application, then the matter would have ended there. Needless to say, at the hearing proper that locus may still be challenged by the respondent, and thereupon deny the applicant the right to pursue the prayers at the second stage.

With the opening factor of *locus standi* established, an applicant need only thereafter show a *prima facie* case on the face of the records that his application is not frivolous or vexatious (*George John v. Eng Wah Bros Film Sdn Bhd & 2 Ors* [1988] 1 MLJ 319). If there are grounds that may be considered at the trial proper, then the latter prerequisite, in that the application

is not frivolous and vexatious, has been duly established. In other words I now have to deal with the sufficiency of the evidence, to decide whether a *prima facie* case of the respondent having acted unlawfully or *ultra vires* his powers under the Local Government Act 1976, may be sustained. Once I am satisfied with its sufficiency, and having been satisfied with the issue of *locus standi* earlier, O. 53 r. 3(1) of the Rules of the High Court 1980 would have been satisfied and leave would invariably be given. I need to state that at this stage there is no necessity for me to delve into the grounds in great depth.

Having scrutinized the complaints here briefly, the grounds canvassed were not restricted to questions of dollars and cents only but had included the broader question of law, amongst them the contravention of the constitutional rights of the applicant, particularly that of art. 13 of the Federal Constitution. This article provides that no person shall be deprived of property save in accordance with the law.

I now sift the evidence. For purposes of when the impugned rates had to be paid in this matter, it was crystal clear that it had to be made by the end of August ie, 31 of August 2003. Unfortunately he had only managed to pay the rates on 2 September 2003 as 31 August 2003 was Hari Merdeka or National Day. Under the First Schedule pursuant to s. 3 of the Holidays Act 1951 (Act 369), Hari Kebangsaan or National Day is a statutory public holiday. This Act, which has its effective date 1 July 1989 is a consolidation of F.M Ordinance No. 55 of 1951 enacted in 1951 (Reprinted in 1968) and Schedule to the Federal Territory (modifications of Holidays Ordinance) Order 1974 (P.U.(A) 278/1974.

Coincidently 31 August fell on a Sunday and thus a weekly holiday at that. That being the situation, it is statute law that in the event any public holiday, in this case that National Day of 31 August 2003, shall fall on a weekly holiday, here that relevant Sunday, then the day following shall be a public holiday. With the end of August being Sunday and the following day a public holiday, the respondent's office therefore was only open to the public on 2 September 2003 ie, a Tuesday. Being caught in that predicament, the applicant was without choice but to make the relevant payment on that Tuesday, as not only was it logical but on the face of the records and law, statutorily provided for (s. 54 of the Interpretation Acts 1948 and 1967 (Act 388). The relevant provision in the latter section reads:

> 54(1) In computing time for the purposes of any written law:
>
> (a) ...;
>
> (b) if the last day of the period is a weekly holiday or a public holiday (referred to this subsection as excluded days) the period shall include the next following day which is not an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day; ...

On the face of the above given facts, *prima facie*, it was quite clear that he had sufficient grounds to complain, particularly as the respondent had not taken into consideration the antecedents of the matter and the law before imposing the surcharge of RM7.92. Whether the act of the respondent to impose that surcharge was deliberate, or euphemistically put as a consequence of want of understanding of his work, will only be decided at the trial proper.

As the above reasons were already sufficient to support a *prima facie* case to deserve leave, I have deliberately refrained from discussing the additional reason of the illegality of the imposition of the 5% surcharge pursuant to s. 147 of the Local Government Act 1976 for want of it being gazetted by the State Government pursuant to ss. 102A and 103 of the same Act. I have reserved that equally important poser for the hearing proper.

Apart from the above considerations, I did consider whether this application was frivolous due to the uneconomical nature of the case or even an abuse of the process of the court, bearing in mind that the amount involved was unimpressive (O. 18 r. 19 of the Rules of the High Court 1980). Even the filing fees of this application were higher than that surcharge. Taking the matter a step further, I had mentally considered this poser: What if the applicant had merely wanted to pay the original sum of RM158.40 and had requested for a delay of the payment of that 5% surcharge from the respondent for further clarification, would the cashier have allowed it? Perusing the applicant's supporting affidavit, which required the latter to laboriously fill in some administrative form by the respondent, so as to acknowledge that surcharge, I was more than satisfied that the latter would probably either disallow the payment without the additional surcharge, or even cause some administrative disaffection on the applicant. In a gist if the respondent took the matter of the surcharge seriously why could the applicant likewise not do that too? If it was not frivolous to the respondent, it was likewise not frivolous to the applicant. That being so, on the totality of the facts, intertwined with the legal ramifications, which subsequently flowed from the facts, this application at this stage could not be said to be frivolous or an abuse of the process of the court.

Based on the above reasons I had allowed the application for leave.